

## SUBCHAPTER C—CERTAIN REPORTING AND DISCLOSURE REQUIREMENTS

### PART 4010—ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING

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AUTHORITY: 29 U.S.C. 1302(b)(3), 1310.

SOURCE: 61 FR 34022, July 1, 1996, unless otherwise noted.

#### § 4010.1 Purpose and scope.

This part prescribes the requirements for annual filings with the PBGC under section 4010 of ERISA. This part applies to filers for any information year ending on or after December 31, 1995.

#### § 4010.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: benefit liabilities, Code, contributing sponsor, controlled group, ERISA, fair market value, IRS, PBGC, person, plan, and plan year.

In addition, for purposes of this part:

*Exempt entity* means a person who does not have to file information and about whom information does not have to be filed, as described in § 4010.4(d) of this part.

*Exempt plan* means a plan about which actuarial information does not have to be filed, as described in § 4010.8(c) of this part.

*Fair market value of the plan's assets* means the fair market value of the plan's assets at the end of the plan year ending within the filer's information year (determined without regard to any contributions receivable).

*Filer* means a person who is required to file reports, as described in § 4010.4 of this part.

*Fiscal year* means, with respect to a person, the person's annual accounting period or, if the person has not adopted a closing date, the calendar year.

*Information year* means the year determined under § 4010.5 of this part.

#### § 4010.3 Filing requirement.

(a) *In general.* Except as provided in § 4010.8(c) (relating to exempt plans) and except where waivers have been granted under § 4010.11, each filer shall submit to the PBGC annually, on or before the due date specified in § 4010.10, all information specified in § 4010.6(a) with respect to all members of a controlled group and all plans maintained by members of a controlled group. Under § 4000.3(b) of this chapter, except as otherwise provided by the PBGC, the information shall be submitted electronically in accordance with the instructions on the PBGC's Web site.

(b) *Single controlled group submission.* Any filer or other person may submit the information specified in § 4010.6(a) on behalf of one or more members of a filer's controlled group.

[70 FR 11544, Mar. 9, 2005]

#### § 4010.4 Filers.

(a) *General.* A contributing sponsor of a plan and each member of the contributing sponsor's controlled group is a filer with respect to an information year (unless exempted under paragraph (d) of this section) if—

(1) The aggregate unfunded vested benefits of all plans (including any exempt plans) maintained by the members of the contributing sponsor's controlled group exceed \$50 million (disregarding those plans with no unfunded vested benefits);

(2) Any member of a controlled group fails to make a required installment or other required payment to a plan and, as a result, the conditions for imposition of a lien described in section 302(f)(1)(A) and (B) of ERISA or section 412(n)(1)(A) and (B) of the Code have

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been met during the information year, and the required installment or other required payment is not made within ten days after its due date; or

(3) Any plan maintained by a member of a controlled group has been granted one or more minimum funding waivers under section 303 of ERISA or section 412(d) of the Code, totaling in excess of \$1 million and, as of the end of the plan year ending within the information year, any portion thereof is still outstanding (determined in accordance with paragraph (c) of this section).

(b) *Unfunded vested benefits.* (1) *General.* For purposes of the \$50 million test in paragraph (a)(1) of this section, the value of a plan's unfunded vested benefits is determined at the end of the plan year ending within the filer's information year in accordance with section 4006(a)(3)(E)(iii) of ERISA and § 4006.4 of this chapter (without reference to the exemptions and special rules under § 4006.5 of this chapter).

(2) *Contributions.* For purposes of determining the value of a plan's unfunded vested benefits under paragraph (b)(1) of this section, contributions made after the end of the plan year ending within the filer's information year are taken into account for that plan year only to the extent that they are—

(i) Paid on or before the filing due date under § 4010.10(a) (without regard to the alternative due date under § 4010.10(b));

(ii) Attributable to that plan year for funding purposes under ERISA section 302(c)(1) and section 412(c)(10) of the Code; and

(iii) Discounted in accordance with § 4006.4(b)(2)(iv) if unfunded vested benefits are determined under § 4006.4(b) or in accordance with § 4006.4(c)(4) if unfunded vested benefits are determined under § 4006.4(c).

(c) *Outstanding waiver.* Before the end of the statutory amortization period, a portion of a minimum funding waiver for a plan is considered outstanding unless—

(1) A credit balance exists in the funding standard account (described in section 302(b) of ERISA and section 412(b) of the Code) that is no less than the outstanding balance of all waivers for the plan;

(2) A waiver condition or contractual obligation requires that a credit balance as described in paragraph (c)(1) continue to be maintained as of the end of each plan year during the remainder of the statutory amortization period for the waiver; and

(3) No portion of any credit balance described in paragraph (c)(1) is used to make any required installment under section 302(e) of ERISA or section 412(m) of the Code for any plan year during the remainder of the statutory amortization period.

(d) *Exempt entities.* A person is an exempt entity if the person—

(1) Is not a contributing sponsor of a plan (other than an exempt plan);

(2) Has revenue for its fiscal year ending within the controlled group's information year that is five percent or less of the controlled group's revenue for the fiscal year(s) ending within the information year;

(3) Has annual operating income for the fiscal year ending within the controlled group's information year that is no more than the greater of—

(i) Five percent of the controlled group's annual operating income for the fiscal year(s) ending within the information year, or

(ii) \$5 million; and

(4) Has net assets at the end of the fiscal year ending within the controlled group's information year that is no more than the greater of—

(i) Five percent of the controlled group's net assets at the end of the fiscal year(s) ending within the information year, or

(ii) \$5 million.

[61 FR 34022, July 1, 1996, as amended at 70 FR 11544, Mar. 9, 2005]

### § 4010.5 Information year.

(a) *Determinations based on information year.* An information year is used under this part to determine which persons are filers (§ 4010.4), what information a filer must submit (§§ 4010.6–4010.9), whether a plan is an exempt plan (§ 4010.8(c)), and the due date for submitting the information (§ 4010.10(a)).

(b) *General.* Except as provided in paragraph (c) of this section, a person's information year shall be the fiscal

year of the person. A filer is not required to change its fiscal year or the plan year of a plan, to report financial information for any accounting period other than an existing fiscal year, or to report actuarial information for any plan year other than an existing plan year.

(c) *Controlled group members with different fiscal years*—(1) *Use of calendar year.* If members of a controlled group (disregarding any exempt entity) report financial information on the basis of different fiscal years, the information year shall be the calendar year.

(2) *Example.* Filers A and B are members of the same controlled group. Filer A has a July 1 fiscal year, and filer B has an October 1 fiscal year. The information year is the calendar year. Filer A's financial information with respect to its fiscal year ending June 30, 2004, and filer B's financial information with respect to its fiscal year ending September 30, 2004, must be submitted to the PBGC following the end of the 2004 calendar year (the calendar year in which those fiscal years end). If filer B were an exempt entity, the information year would be filer A's July 1 fiscal year.

[61 FR 34022, July 1, 1996, as amended at 70 FR 11544, Mar. 9, 2005]

**§ 4010.6 Information to be filed.**

(a) *General.* (1) *Current filers.* A filer must submit the information specified in § 4010.7 (identifying information), § 4010.8 (plan actuarial information) and § 4010.9 (financial information) with respect to each member of the filer's controlled group and each plan maintained by any member of the controlled group, and any other information relating to the information specified in §§ 4010.7 through 4010.9, as specified in the instructions on the PBGC's website.

(2) *Previous filers.* If a filer for the immediately preceding information year is not required to file for the current information year, the filer must submit information, in accordance with the instructions on the PBGC's website, demonstrating why a filing is not required for the current information year.

(b) *Additional information.* By written notification, the PBGC may require any filer to submit additional actuarial

or financial information that is necessary to determine plan assets and liabilities for any period through the end of the filer's information year, or the financial status of a filer for any period through the end of the filer's information year (including information on exempt entities and exempt plans). The information must be submitted within ten days after the date of the written notification or by a different time specified therein.

(c) *Previous submissions.* If any required information has been previously submitted to the PBGC, a filer may incorporate this information into the required submission by referring to the previous submission.

[61 FR 34022, July 1, 1996, as amended at 70 FR 11544, Mar. 9, 2005]

**§ 4010.7 Identifying information.**

(a) *Filers.* Each filer is required to provide, in accordance with the instructions on the PBGC's website, the following identifying information with respect to each member of the controlled group (excluding exempt entities)—

(1) *Current members.* For an entity that is a member of the controlled group as of the end of the filer's information year—

(i) The name, address, and telephone number of the entity and the legal relationships with other members of the controlled group (for example, parent, subsidiary);

(ii) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the entity (or if there is no EIN for the entity, an explanation);

(iii) If the entity became a member of the controlled group during the information year, the date the entity became a member of the controlled group; and

(2) *Former members.* For any entity that ceased to be a member of the controlled group during the filer's information year, the date the entity ceased to be a member of the controlled group and the identifying information required by paragraph (a)(1) of this section as of the date immediately preceding the date the entity left the controlled group.

(b) *Plans.* Each filer is required to provide, in accordance with the instructions on the PBGC's website, the following identifying information with respect to each plan (including exempt plans) maintained by any member of the controlled group (including exempt entities)—

(1) *Current plans.* For a plan that is maintained by the controlled group as of the last day of the filer's information year—

(i) The name of the plan;

(ii) The EIN and the three-digit Plan Number (PN) assigned by the contributing sponsor to the plan (or if there is no EIN or PN for the plan, an explanation);

(iii) If the EIN or PN of the plan has changed since the beginning of the filer's information year, the previous EIN or PN and an explanation;

(iv) If the plan had not been maintained by the controlled group immediately before the filer's information year, the date the plan was first maintained by the controlled group during the information year; and

(v) If, as of any day during the information year, the plan was frozen (for eligibility or benefit accrual purposes), a description of the date and the nature of the freeze (*e.g.*, service is frozen but pay is not).

(2) *Former plans.* For a plan that ceased to be maintained by the controlled group during the filer's information year, the date the plan ceased to be so maintained, identification of the controlled group currently maintaining the plan, and the identifying information required by paragraph (b)(1) as of the date immediately preceding that date.

[70 FR 11544, Mar. 9, 2005]

#### § 4010.8 Plan actuarial information.

(a) *Required information.* For each plan (other than an exempt plan) maintained by any member of the filer's controlled group, each filer is required to provide, in accordance with the instructions on the PBGC's website, the following actuarial information—

(1) The number of—

(i) Retired participants and beneficiaries receiving payments;

(ii) Terminated vested participants, and

(iii) Active participants;

(2) The fair market value of the plan's assets;

(3) The value of the plan's benefit liabilities, setting forth separately the value of the liabilities attributable to retired participants and beneficiaries receiving payments, terminated vested participants, and active participants, determined (in accordance with paragraph (d) of this section) at the end of the plan year ending within the filer's information year;

(4) A description of the actuarial assumptions for interest (*i.e.*, the specific interest rate(s), such as 5%), mortality, retirement age, and loading for administrative expenses, as used to determine the benefit liabilities in paragraph (a)(3) of this section; and

(5) A copy of the actuarial valuation report for the plan year ending within the filer's information year that contains or is supplemented by the following information—

(i) Each amortization base and related amortization charge or credit to the funding standard account (as defined in section 302(b) of ERISA or section 412(b) of the Code) for that plan year (excluding the amount considered contributed to the plan as described in section 302(b)(3)(A) of ERISA or section 412(b)(3)(A) of the Code),

(ii) The itemized development of the additional funding charge payable for that plan year pursuant to section 412(1) of the Code,

(iii) The minimum funding contribution and the maximum deductible contribution for that plan year,

(iv) The actuarial assumptions and methods used for that plan year for purposes of section 302(b) and (d) of ERISA or section 412(b) and (1) of the Code (and any change in those assumptions and methods since the previous valuation and justifications for any change),

(v) A summary of the principal eligibility and benefit provisions on which the valuation of the plan was based (and any changes to those provisions since the previous valuation), along with descriptions of any benefits not included in the valuation, any significant events that occurred during that plan year, and the plan's early retirement factors,

(vi) The current liability, vested and nonvested, calculated pursuant to section 412 of the Code, setting forth separately the value of the liabilities attributable to retired participants and beneficiaries receiving payments, terminated vested participants, and active participants,

(vii) The expected increase in current liability due to benefits accruing during the plan year, and

(viii) The expected plan disbursements for the plan year; and

(6) A written certification by an enrolled actuary that, to the best of his or her knowledge and belief, the actuarial information submitted is true, correct, and complete and conforms to all applicable laws and regulations, provided that this certification may be qualified in writing, but only to the extent the qualification(s) are permitted under 26 CFR 301.6059–1(d).

(b) *Alternative compliance for plan actuarial information.* If any of the information specified in paragraph (a)(5) of this section is not available by the date specified in § 4010.10(a), a filer may satisfy the requirement to provide such information by—

(1) Including a statement, with the material that is submitted to the PBGC, that the filer will file the unavailable information by the alternative due date specified in § 4010.10(b), and

(2) Filing such information (along with a certification by an enrolled actuary under paragraph (a)(6) of this section) with the PBGC by that alternative due date.

(c) *Exempt plan.* The actuarial information specified in this section is not required with respect to a plan that, as of the end of the plan year ending within the filer's information year, has fewer than 500 participants or has benefit liabilities (determined in accordance with paragraph (d) of this section) equal to or less than the fair market value of the plan's assets, provided that the plan—

(1) Has received, on or within ten days after their due dates, all required installments or other payments required to be made during the information year under section 302 of ERISA or section 412 of the Code; and

(2) Has no minimum funding waivers outstanding (as described in § 4010.4(c) of this part) as of the end of the plan year ending within the information year.

(d) *Value of benefit liabilities.* The value of a plan's benefit liabilities at the end of a plan year shall be determined using the plan census data described in paragraph (d)(1) of this section and the actuarial assumptions and methods described in paragraph (d)(2) or, where applicable, (d)(3) of this section.

(1) *Census data*—(i) *Census data period.* Plan census data shall be determined (for all plans for any information year) either as of the end of the plan year or as of the beginning of the next plan year.

(ii) *Projected census data.* If actual plan census data is not available, a plan may use a projection of plan census data from a date within the plan year. The projection must be consistent with projections used to measure pension obligations of the plan for financial statement purposes and must give a result appropriate for the end of the plan year for these obligations. For example, adjustments to the projection process will be required where there has been a significant event (such as a plan amendment or a plant shutdown) that has not been reflected in the projection data.

(2) *Actuarial assumptions and methods.* The value of benefit liabilities shall be determined using the assumptions and methods applicable to the valuation of benefits to be paid as annuities in trustee plans terminating at the end of the plan year (as prescribed in §§ 4044.51 through 4044.57 of this chapter).

(3) *Special actuarial assumptions for exempt plan determination.* Solely for purposes of determining whether a plan is an exempt plan, the value of benefit liabilities may be determined by substituting for the retirement age assumptions in paragraph (d)(2) the retirement age assumptions used by the plan for that plan year for purposes of section 302(d) of ERISA or section 412(1) of the Code.

[61 FR 34022, July 1, 1996, as amended at 70 FR 11545, Mar. 9, 2005]

**§ 4010.9 Financial information.**

(a) *General.* Except as provided in this section, each filer is required to provide, in accordance with the instructions on the PBGC's Web site, the following financial information for each controlled group member (other than an exempt entity)—

(1) Audited financial statements for the fiscal year ending within the information year (including balance sheets, income statements, cash flow statements, and notes to the financial statements);

(2) If audited financial statements are not available by the date specified in § 4010.10(a), unaudited financial statements for the fiscal year ending within the information year; or

(3) If neither audited nor unaudited financial statements are available by the date specified in § 4010.10(a), copies of federal tax returns for the tax year ending within the information year.

(b) *Consolidated financial statements.* If the financial information of a controlled group member is combined with the information of other group members in consolidated financial statements, a filer may provide the following financial information in lieu of the information required in paragraph (a) of this section—

(1) The audited consolidated financial statements for the filer's information year or, if the audited consolidated financial statements are not available by the date specified in § 4010.10(a), unaudited consolidated financial statements for the fiscal year ending within the information year; and

(2) For each controlled group member included in the consolidated financial statements (other than an exempt entity), the member's revenues and operating income for the information year, and net assets at the end of the information year.

(c) *Subsequent submissions.* If unaudited financial statements are submitted as provided in paragraph (a)(2) or (b)(1) of this section, audited financial statements must thereafter be filed within 15 days after they are prepared. If federal tax returns are submitted as provided in paragraph (a)(3) of this section, audited and unaudited financial statements must thereafter

be filed within 15 days after they are prepared.

(d) *Submission of public information.* If any of the financial information required by paragraphs (a) through (c) of this section is publicly available, the filer, in lieu of submitting such information to the PBGC, may include a statement with the other information that is submitted to the PBGC indicating when such financial information was made available to the public and where the PBGC may obtain it. For example, if the controlled group member has filed audited financial statements with the Securities and Exchange Commission, it need not file the financial statements with PBGC but instead can identify the SEC filing as part of its submission under this part.

(e) *Inclusion of information about non-filers and exempt entities.* Consolidated financial statements provided pursuant to paragraph (b)(1) of this section may include financial information of persons who are not controlled group members (*e.g.*, joint ventures) or are exempt entities.

[61 FR 34022, July 1, 1996, as amended at 70 FR 11545, Mar. 9, 2005]

**§ 4010.10 Due date and filing with the PBGC.**

(a) *Due date.* Except as permitted under paragraph (b) of this section, a filer shall file the information required under this part with the PBGC on or before the 105th day after the close of the filer's information year.

(b) *Alternative due date.* A filer that includes the statement specified in § 4010.8(b)(1) with its submission to the PBGC by the date specified in paragraph (a) of this section must submit the actuarial information specified in § 4010.8(b)(2) within 15 days after the deadline for filing the plan's annual report (Form 5500 series) for the plan year ending within the filer's information year (see § 2520.104a-5(a)(2) of this title).

(c) *How and where to file.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. See § 4000.4 of this chapter for information on where to file.

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(d) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(e) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

[61 FR 34022, July 1, 1996, as amended at 68 FR 61353, Oct. 28, 2003]

## § 4010.11 Waivers and extensions.

The PBGC may waive the requirement to submit information with respect to one or more filers or plans or may extend the applicable due date or dates specified in § 4010.10 of this part. The PBGC will exercise this discretion in appropriate cases where it finds convincing evidence supporting a waiver or extension; any waiver or extension may be subject to conditions. A request for a waiver or extension must be filed in writing with the PBGC at the address provided in § 4010.10(c) no later than 15 days before the applicable date specified in § 4010.10 of this part, and must state the facts and circumstances on which the request is based.

## § 4010.12 Confidentiality of information submitted.

In accordance with § 4901.21(a)(3) of this chapter and section 4010(c) of ERISA, any information or documentary material that is not publicly available and is submitted to the PBGC pursuant to this part shall not be made public, except as may be relevant to any administrative or judicial action or proceeding or for disclosures to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

## § 4010.13 Penalties.

If all of the information required under this part is not provided within the specified time limit, the PBGC may assess a separate penalty under section 4071 of ERISA against the filer and each member of the filer's controlled group (other than an exempt entity) of up to \$1,100 a day for each day that the failure continues. The PBGC may also

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pursue other equitable or legal remedies available to it under the law.

[61 FR 34022, July 1, 1996, as amended at 62 FR 36994, July 10, 1997]

## § 4010.14 OMB control number.

The collection of information requirements contained in this part have been approved by the Office of Management and Budget under OMB control number 1212-0049.

## PART 4011—DISCLOSURE TO PARTICIPANTS

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APPENDIX A TO PART 4011—MODEL PARTICIPANT NOTICE

APPENDIX B TO PART 4011—TABLE OF MAXIMUM GUARANTEED BENEFITS

AUTHORITY: 29 U.S.C. 1302(b)(3), 1311.

SOURCE: 61 FR 34026, July 1, 1996, unless otherwise noted.

## § 4011.1 Purpose and scope.

This part prescribes rules and procedures for complying with the requirements of section 4011 of ERISA. This part applies for any plan year beginning on or after January 1, 1995, and on or before December 31, 2006, with respect to any single-employer plan that is covered by section 4021 of ERISA.

[61 FR 34026, July 1, 1996, as amended at 72 FR 2616, Jan. 22, 2007]

## § 4011.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: contributing sponsor, employer, ERISA, normal retirement age, PBGC, person, plan, plan administrator, plan year, and single-employer plan.

In addition, for purposes of this part:

*Participant* has the meaning in § 4041.2 of this chapter.